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Attorneys for Defendant and Counterclaimant
 COOLIT SYSTEMS, INC.

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

ASETEK DANMARK A/S,

 Plaintiff and
 Counterdefendant,

 v.

 COOLIT SYSTEMS, INC.,

 Defendant and
 Counterclaimant.

CASE NO. 3:19-cv-00410-EMC

**FURTHER JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT**

Date: December 22, 2020
 Time: 1:30 PM
 Location: Courtroom 5, 17th Floor
 Judge: Hon. Edward M. Chen

1 Plaintiff and Counterdefendant Asetek Danmark A/S (“Asetek”) and Defendant and
 2 Counterclaimant CoolIT Systems, Inc. (“CoolIT”) jointly submit the following FURTHER JOINT
 3 CASE MANAGEMENT STATEMENT.

4 1. **Jurisdiction & Service**

5 The basis for the Court’s subject matter jurisdiction over Asetek’s claims and CoolIT’s
 6 counterclaims are the patent laws of the United States, Title 35 of the United States Code. Specifically,
 7 this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). All parties have been
 8 served.

9 2. **Facts**

10 Asetek’s operative complaint alleges that various CoolIT products infringe Asetek’s U.S.
 11 Patent Nos. 8,240,362 (“the ’362 patent”); 8,245,764 (“the ’764 patent”); 9,733,681 (“the ’681
 12 patent”); 10,078,354 (“the ’354 patent”); and 10,078,355 (“the ’355 patent”) (collectively the “Asetek
 13 Patents”).

14 CoolIT alleges that various Asetek products infringe CoolIT’s U.S. Patent Nos. 8,746,330 (“the
 15 ’330 patent”), 9,603,284 (“the ’284 patent”), 9,057,567 (“the ’567 patent”), and 10,274,266 (“the ’266
 16 patent”) (collectively the “CoolIT Patents”). CoolIT has sought leave to amend its counterclaims to
 17 include declaratory judgment claims against two additional Asetek patents, U.S. Patent Nos.
 18 10,613,601 (“the ’601 patent”) and 10,599,196 (“the ’196 patent”).

19 3. **Legal Issues**

- 20 a) Whether the Asetek Patents are valid and enforceable;
- 21 b) Whether CoolIT infringes any valid and enforceable claim of the Asetek Patents;
- 22 c) Whether CoolIT’s infringement of any valid and enforceable claim of the Asetek
 23 Patents, if any, was willful;
- 24 d) Whether the CoolIT Patents are valid and enforceable;
- 25 e) Whether Asetek infringes any valid and enforceable claim of the CoolIT patents;
- 26 f) Whether Asetek’s infringement of any valid and enforceable claim of the CoolIT
 27 Patents, if any, was willful;

- g) Whether this case is an exceptional case under 35 U.S.C. § 285 entitling any party to an award of attorneys' fees;
- h) Whether the Court should permit CoolIT to amend its counterclaims to include declaratory judgment counterclaims of non-infringement of the '354, '355, '601, and '196 patents covering the Capellix products and CoolIT's new design;
- i) Whether the Court should stay the related case against Corsair under the customer suit exception and/or the Court's inherent power; and
- j) Assuming the Court permits CoolIT's proposed amendments:
- a. Whether CoolIT infringes any valid and enforceable claim of the '601 and '196 patents.

4. **Motions**

The following motion is pending and scheduled to be heard on the same day as the case management conference:

	Hearing Date	Description	Submissions
1.	December 22, 2020	CoolIT Systems, Inc.'s Motion for Leave to Amend Pleadings and Stay Related Action	Dkt. No. 186 Dkt. No. 191 Dkt. No. 195

The parties also anticipate filing dispositive motions and may file other appropriate motions as this case and discovery progresses.

5. **Amendment of Pleadings**

The parties propose a January 15, 2021 deadline for motions to amend pleadings, although if the Court orders that the Capellix products and/or CoolIT's new design will be accused in this action, then January 25, 2021 or 5 court days after the Court order, whichever is later. Later amendments may be allowed under a showing of good cause.

6. **Evidence Preservation**

The parties certify that they have reviewed the Court's ESI Guidelines, and confirm that they have discussed and taken reasonable steps to preserve ESI. Each party shall take reasonable affirmative steps to continue to preserve evidence related to the issues presented by the action.

1 7. **Disclosures**

2 The parties exchanged Rule 26(a)(1) initial disclosures on June 6, 2019.

3 8. **Discovery**

4 The parties previously described agreements regarding the scope of discovery in their Joint
 5 Initial Case Management Statement, which is incorporated herein by reference. Dkt. No. 29 at 3-7.
 6 The parties entered into a stipulated order regarding the discovery of electronically stored information
 7 (Dkt. No. 49) and a stipulated protective order (Dkt. No. 51). The parties have served requests for
 8 document production and interrogatories and responses to same. In addition, CoolIT served six
 9 subpoenas to third parties and the Court recently granted its request for issuance of a letter rogatory
 10 (Dkt. No. 71). Asetek conducted one fact deposition of Sean Mutlow, CoolIT's Director of Sales, on
 11 October 10, 2019. No other depositions have been held to date.

12 9. **Class Actions**

13 This case is not a class action.

14 10. **Related Cases**

15 (a) Related Case:

16 On September 17, 2020, Plaintiff Asetek filed a case, *Asetek Danmark A/S v. Corsair*
 17 *Gaming, Inc., Corsair Components, Inc., and Corsair Memory, Inc.*, Case 3:20-cv-06541-EMC,
 18 which case was deemed related to the present case on October 13, 2020. Dkt. 174.

19 (b) IPRs:

20 In addition, both parties have filed petitions seeking *Inter Partes* review of certain of the
 21 patents involved in the present litigation. Specifically, on February 7, 2020, CoolIT submitted
 22 (1) IPR2020-00522 concerning Asetek's Patent No. 10,078,355, (2) IPR2020-00523 concerning
 23 Asetek's Patent No. 10,078,354, and (3) IPR2020-00524 concerning Asetek's Patent No. 9,733,681.
 24 On March 26, 2020 Asetek submitted IPR2020-00747 concerning CoolIT's Patent No. 9,057,567. And
 25 on April 10, 2020, Asetek submitted IPR2020-00825 concerning CoolIT's Patent No. 10,274,266.
 26 Asetek stipulated to the Patent Trial and Appeal Board to not pursue in the district court any §§ 102
 27 or 103 invalidity ground based solely on prior art patents or printed publications (excluding system
 28 art) that were raised or could have been reasonably raised in the IPRs. The Patent Trial and Appeal

Board issued a decision granting institution of *Inter Partes* Review in each of the above CoolIT and Asetek IPR proceedings. Oral argument for CoolIT's IPRs is scheduled for May 24, 2021, and oral argument for Asetek's IPRs is scheduled for June 22, 2021.

11. **Relief**

Each party is seeking damages of no less than a reasonable royalty for alleged infringement of its patents and a trebling of damages for alleged willful infringement; costs and attorney's fees in defending against this lawsuit; and such other relief as the Court deems just and proper. Each party believes the other is not entitled to any relief. The parties exchanged Patent Local Rule 3-8 damages contentions on October 30, 2019.

12. **Settlement and ADR**

This case has been referred to Magistrate Judge Sallie Kim for settlement purposes. Two settlement conferences have been held, one in December 2019 and one in September 2020. The parties' CEOs also recently had a one-on-one discussion regarding potential settlement. Judge Kim has said she is willing to meet again with the parties if and when circumstances warrant.

13. **Consent to Magistrate Judge for All Purposes**

Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment. ____ YES __X__ NO

14. **Other References**

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. **Narrowing of Issues**

The parties are not currently aware of issues that can be narrowed by agreement or motion. The parties will continue to evaluate and work together to expedite the presentation of evidence at trial, but they do not have any specific joint proposals at this time.

16. **Expedited Trial Procedure**

The parties do not believe that this is the type of case that can be handled on an expedited basis with streamlined procedures.

17. **Scheduling**

Asetek's Position:

Asetek's proposed schedule is realistic and practical, CoolIT's is not. CoolIT's proposal to have close of fact-discovery and opening expert reports be due the same day, and to have close of expert discovery and the deadline to file dispositive motions be due the same day, is impractical and unprecedented. Moreover, fact discovery is progressing and, contrary to CoolIT's proposal, the parties should not require almost seven more months to complete fact discovery when this case has been ongoing for almost two years.

As a result of the Court granting of CoolIT's prior motion to amend its infringement contentions for its '330 patent (Dkt. Nos. 184, 190), Asetek's proposed schedule below includes deadlines for claim construction negotiations and briefing for construction of the disputed claim terms "plurality of [juxtaposed] fins" and "side[s] of the fins" in CoolIT's '330 patent. Contrary to CoolIT's argument below, the Court construed the terms "adjacent" and "juxtaposed with"; the Court did not construe "plurality of [juxtaposed] fins" and "side[s] of the fins" as CoolIT now contends. Dkt. 149 at 45. Because CoolIT's amended infringement contentions changed the scope of the asserted '330 claims, the Court needs to engage in claim construction to determine whether a skilled artisan would understand "plurality of [juxtaposed] fins" to mean the full array of fins (Asetek's position, and CoolIT's prior position), or a narrow band of the fins (CoolIT's new position). Similarly, the Court will have to construe whether a skilled artisan would understand "side[s] of the fins" to mean the sides of the outermost fins in the array (Asetek's position, and CoolIT's prior position), or the sides of any fins inside the array (CoolIT's new position).

Asetek's proposed schedule also includes deadlines based on the assumption that the CoolIT's Capellix products, but not CoolIT's prototype "new design" (as identified in its pending motion), are added to the case. Addition of the prototype "new design" to the case will lengthen the case schedule beyond that proposed by CoolIT and further complicate an already complex case because it will require the parties to engage in negotiations and briefing under the Patent Local Rules to address CoolIT's "new design." If the Court adds the "new design" then Asetek believes that neither of the

1 parties' proposed schedules below are adequate and that the parties should meet and confer regarding
2 another schedule.

3 **CoolIT's Position:**

4 CoolIT's proposed schedule is consistent with the Court's Guidelines re Calculation of Trial
5 Time Line. Additionally, much discovery remains in the case and only one party witness has been
6 deposited as noted above.

7 CoolIT does not believe that any additional claim construction is necessary as the terms "a
8 plurality of [juxtaposed] fins" and "side[s] of the fins" have a readily understood plain and ordinary
9 meaning to a person of ordinary skill in the art. Asetek mischaracterizes CoolIT's position with respect
10 to the "disputed" claim terms to make it seem like there is more of a dispute than there really is. First,
11 CoolIT never proposed that "plurality of [juxtaposed] fins" is limited to "a narrow band of fins." This
12 is readily shown by the annotated images included in CoolIT's motion to amend where CoolIT
13 identifies nearly all the fins as meeting this limitation. (*See, e.g.*, Dkt. No. 157 at 8-11.) Second,
14 CoolIT never proposed construing "side[s] of the fins" as "the sides of any fins inside the array."
15 Again, CoolIT's briefing makes it clear that this is only the sides of the fins of the identified plurality
16 of fins. (*Id.*) CoolIT is especially confused by the "dispute" here as it is evident that the "side[s] of
17 the fins" would simply be the sides of the identified "plurality of fins." Moreover, Asetek previously
18 included the terms "plurality of [juxtaposed] fins" and "side[s] of the fins" in its proposed
19 constructions. The Court duly considered Asetek's proposal as evidenced by the Court's order, which
20 notes Asetek's proposed constructions that include these terms. (*See* Dkt. No. 149, pp. 29-30.) If
21 further claim construction is necessary, any claim construction dispute can be resolved as part of a
22 summary judgment motion or in a pretrial order, rather than require the parties and Court to undertake
23 separate claim construction briefing and a hearing. Nevertheless, if the Court believes separate claim
24 construction briefing and a hearing would be helpful, CoolIT has included alternate dates in its
25 proposal below.

26 CoolIT's proposed schedule includes deadlines that would apply to both the Capellix products
27 and CoolIT's new design. Asetek's schedule also appears to indicate that it intends to drop the '764
28

and '681 patents though it would not confirm this despite CoolIT requesting confirmation during the parties' meet and confer process.

One or both parties may move to modify their proposals based on the Court's rulings and/or developments in this action.

Event	Asetek's Proposed Dates assuming Capellix included but not CoolIT's "new design"	CoolIT's Proposed Dates assuming the Capellix and/or "new design" are included in this case
<p><u>Asetek's proposal:</u> If the Court orders that the Capellix product be included as an accused product in the present case, Asetek to serve (a) identification of asserted claims from the '362, '354, '355, '601, and '196 patents against accused CoolIT products including Capellix (subject to an overall limit of 16 claims with no more than 5 claims per patent and no new claims from the '362, '354, and '355 patents, i.e., claims for these patents must be from the previously selected 16 claims), and (b) Asetek to serve amended infringement contentions including the Capellix product and the '601 and 196 patent. If the Court orders inclusion of CoolIT's prototype "new design" in this action, then full claim construction negotiations under the Patent Local Rules, briefing, and a hearing will be required, neither of the schedules proposed to the right will be adequate, and a further meet and confer should be ordered.</p> <p><u>CoolIT's proposal:</u> If the court orders that the Capellix products and/or CoolIT's new design be included as accused products in the instant case, Asetek to serve (a) identification of asserted claims from all asserted patents against CoolIT products (including Capellix and CoolIT's new design) subject to an overall limit of 16 claims with no more than 5 claims per patent and no new claims identified from the '362, '354, and '355 patents; and (b) amended infringement contentions including the Capellix products, CoolIT's new design, and the '601 and '196 patents.</p>	5 court days after Court order permitting inclusion of the Capellix products in the present case	No later than 10 court days after Court order permitting inclusion of the Capellix products and/or CoolIT's new design in the present case.
<p><u>Asetek's proposal:</u> If the Court orders that the Capellix products be included as an accused product in the present case, CoolIT to serve invalidity contentions for the '196 and '601 patents</p> <p><u>CoolIT's proposal:</u> If the Court orders that the Capellix products and/or CoolIT's new design be included as an accused product in the present case, CoolIT to serve invalidity contentions for the '196 and '601 patents</p>	10 court days after Asetek serves infringement contentions	No later than 15 court days after Asetek serves amended infringement contentions.

Deadline to move to add parties or amend the pleadings	January 15, 2021 or 5 court days after Court order permitting inclusion of the Capellix product in this case	January 15, 2021 or 5 court days after Court order permitting inclusion of the Capellix products and/or CoolIT's new design in this case, whichever is later.
Exchange of preliminary claim constructions and extrinsic evidence for the claim terms "plurality of [juxtaposed] fins" and "side[s] of the fins" in CoolIT's '330 patent	January 7, 2021	January 28, 2021
Joint Claim Construction and Prehearing Statement and Expert Reports	January 21, 2021	As stated above, CoolIT does not believe separate claim construction briefing is necessary, but provides the following, alternate claim construction dates: February 11, 2021
Completion of Claim Construction Discovery	January 29, 2021	February 19, 2021
Opening Claim Construction Brief (CoolIT)	February 4, 2021	February 26, 2021
Responsive Claim Construction Brief (Asetek)	February 18, 2021	March 12, 2021
Reply Claim Construction Brief (CoolIT)	February 25, 2021	March 19, 2021
Claim Construction Hearing	March 11, 2021 (or at the Court's convenience)	At the Court's convenience.
Fact discovery cut-off	March 26, 2021	July 29, 2021
Opening expert reports	April 9, 2021	July 29, 2021
Rebuttal expert reports	April 30, 2021	August 19, 2021
Expert discovery cut-off	May 14, 2021	September 9, 2021
Deadline to file dispositive motions	July 15, 2021	September 9, 2021
Hearing on dispositive motions	August 19, 2021	October 14, 2021
Meet and confer re pretrial conference statements	September 28, 2021	November 9, 2021
Joint pretrial conference statement/trial briefs	October 12, 2021	November 30, 2021
Objections due	October 21, 2021	December 10, 2021
Pretrial conference	Nov. 2, 2021	December 21, 2021 at 2:30 P.M.

Trial	Nov. 29, 2021	January 24, 2022 ¹
Estimate of trial length (in days)	10-12 court days	7-10 court days

18. **Trial**

The parties have requested that this case be tried by jury. Asetek believes this trial will take 10-12 court days, CoolIT believes it will take 7-10 court days.

19. **Disclosure of Non-Party Interested Entities or Persons**

Asetek's Statement:

Asetek filed its L.R. 3-15 certification of interested parties on January 23, 2019, identifying Asetek Holdings, Inc.; Asetek A/S; and Arbejdsmarkedets Tillægspension.

CoolIT's Statement:

CoolIT filed its L.R. 3-15 certification on February 25, 2019. CoolIT certifies that other than the named parties, there is no such interest to report.

20. **Professional Conduct**

Counsel of record for the parties has reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. **Other**

None.

¹ CoolIT's proposed trial date was chosen to minimize issues with witness availability during the holidays.

Respectfully submitted,

Dated: December 15, 2020

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Dated: December 15, 2020

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By: /s/ Reuben Chen
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COOLIT SYSTEMS, INC.

ATTESTATION

Counsel for Asetek Danmark A/S hereby attests by his signature below that concurrence in the filing of this document was obtained from counsel for CoolIT Systems, Inc.

Dated: December 15, 2020

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